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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1886 OF 2007

IN

APPLICATION (ESI) NO. 28 OF 1989

Smt. Indumati Navinchandra Dalal ...Appellant.

Vs.

Regional Director, ESI Corporation ...Respondents.

Ms. Lata Desai for the appellant.

Mr. H.V.Mehta for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 14th August, 2007

P.C.

1. The appellant owns establishment at Gala No. 64, Municipal Industrial Estate, Bapti Road, Mumbai.

2. On 15/07/1985, the officer of the Regional Director, ESI Corporation visited the said establishment and submitted the report that the establishment was engaging more than 10 persons therefore covered under the provisions of said Employees State Insurance Act-1948 (for short, "ESI Act").

3. On 23/06/1988, another inspector visited again and submitted similar report after due inquiry.

3. The respondent on 9th January, 1989 issued a letter to the Collector for recovery of Rs.42,491/- from the appellant against the contributions from the period of July 1985 to July 1988. Appellant, therefore, preferred an application No. 28 of 1989 in the ESI Court at Tardeo, Mumbai on 13th February, 1989.

4. By order dated 29/07/2003 after framing the issues and considering the evidence and material placed on record, rejected the said application. Therefore, the present appeal.

5. After considering the rival submissions raised by the learned counsel appearing for the parties and after going through the record and reasoning I am of the view that there is no questions of law raised the present appeal. Actually there are two reports on record of the respondents based upon which the recovery proceedings in question has been initiated. The appellant though not denied the inspection report,

yet unable to lead any evidence to justify her basic contention that the establishment is not amenable to the provisions of ESI Act. The submission that none on behalf of the appellant, 12 persons present at the time of visit that itself cannot be reason to discard the signatures of the employees taken by the inspectors.

6. The appellant failed to produce the salary slip on the register. The burden lies upon the appellant to prove the positive assertion in view of the two reports on the record. The reasoning, therefore, as the appellant failed to prove the case contrary and there was nothing to show that the applicant had entered into the agreement with any person and had given the machinery on hire. The income-tax written in no way support the case of appellant except the income out of the 7 polishing machines. The appellant has neither examined the directors to whom the machines were hired, nor the owner.

7. In view of this, the finding arrived at cannot be said to be perverse or contrary to the law. As the appellant failed to prove and as there is a material on record to show that the appllant falls within the

provisions of ESI Act, the liability so imposed is within the framework of law and the record.

8. The appeal is, therefore, dismissed.

9. No costs.

(ANOOP V. MOHTA, J.)